

# Exhibit “B”

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

ESTATE OF HELEN H. LADEWIG, on  
behalf of itself and the class of all persons  
in the State of Arizona who, during any one  
of the years 1986 to 1989 paid income taxes  
to the State of Arizona on dividends paid by  
corporations whose principal business was  
not attributable to Arizona, et al.,

Plaintiffs

vs.

ARIZONA DEPARTMENT OF  
REVENUE and its Director, in his official  
capacity,

Defendants.

No. TX 97-00075

STIPULATION OF SETTLEMENT

(Assigned to the Honorable Paul A. Katz)

The above-captioned action was brought by the Estate of Helen Ladewig on behalf of itself and all other similarly situated taxpayers seeking refunds of the taxes imposed upon dividends paid by non-Arizona corporations for the years 1986 through 1989.

On December 4, 1998, Judge Dougherty certified a class consisting of all present and former residents of the State of Arizona who paid Arizona income taxes on dividends

paid by corporations whose principal business was not attributable to Arizona during any one or more of the years 1986 to and including 1989, together with their survivors, spouses, heirs, successors, estates and personal representatives and who for any one or more of the tax years 1986 to and including 1989 have not been paid a refund of all such taxes paid. ("Plaintiff Class") In 1999, the trial court found that A.R.S. § 43-1052 violated the Commerce Clause by allowing deductions from Arizona state income tax of dividends paid by corporations doing 50% or more of their business in Arizona, but not allowing deductions for corporate dividends from corporations doing less than 50% of their business in Arizona. However, disputed issues and appellate rights remain, including, but not limited to, the process by which refunds shall be proven and the amount of refunds due to individual taxpayers determined. In an effort to resolve these disputes, accelerate the refund process, obviate the potential necessity of requiring taxpayers to prove entitlement, save further expense, avoid the uncertainties of further litigation, and to secure a total and final settlement of the claims by the Plaintiff Class against Defendants, the parties desire to settle, compromise, and terminate this action and all claims asserted, or could be asserted, therein with respect to Arizona income tax on dividends paid by corporations whose principal business was not attributable to Arizona for years 1986 through 1989, subject to approval of the Court, upon the terms and conditions contained in this Stipulation of Settlement (the "Stipulation").

Now, therefore, for the reasons set forth herein,

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto, subject to the approval of the Court and upon notice and an opportunity for all class members to be heard as follows:

1. NO ADMISSION OF LIABILITY. The settlement of this matter as provided herein shall not be taken or construed as an admission of liability or responsibility by or on the part of the Defendants ("Department") in this litigation to pay refunds. With

respect to those members of the Plaintiff Class who exercise the right to opt-out, the Department expressly reserves the right to contest any and all claims asserted, or to be asserted, by any such person and to assert any and all defenses or procedural requirements that may be applicable. No statement or agreement herein or in connection with this Stipulation shall be admissible against either party except to enforce the Stipulation and the orders of the Court contemplated hereby.

2. NOTICE. The parties agree to amend the forms of notice previously approved by the Court and stipulate to a revised order for notice as set forth in Exhibit "A" hereto ("Amended Plan of Notice"). The stipulation for the revised order for notice will be filed with the Court simultaneously with this Stipulation.

3. NECESSITY OF CLAIM FORM FOR CLASS MEMBERS NOT APPEARING IN DEPARTMENT'S RECORDS. Persons who are not sent the individual notice pursuant to the Amended Plan of Notice set forth in Exhibit "A" of this Stipulation who believe they are entitled to the stipulated refund relief provided for herein for one or more of the tax years in issue, shall have until January 30, 2003, to complete and file a written notice and proof of membership in the class with the Department on a form published by the Department for that purpose. ("Claim Form") The Claim Form will be available on November 6, 2002 and may be obtained from the Department, in person, at any Department office, or by written or telephonic request at P.O. Box 29099, Phoenix, Arizona 85038-9099, 602-542-0700. In addition, a copy of the Claim Form may be downloaded from the Department's Internet website, [www.revenue.state.az.us](http://www.revenue.state.az.us). Copies may also be obtained from Class Counsel at Dividend Refund Class Action, P.O. Box 1328, Phoenix, Arizona 85001-1328; Telephone: (866) 595-3066; [www.dividendrefundclassaction.com](http://www.dividendrefundclassaction.com) or [www.dividendrefundclassaction.com](http://www.dividendrefundclassaction.com). A person who under this paragraph is required to file the Department's Claim Form and who fails to file such a form on or before January 30, 2003, will not participate in the

stipulated refunds provided for herein. Proof of filing shall be by postmark if mailed or by date of receipt if hand-delivered. The form and related instructions will be posted on the Department's website and shall be available from the Department on or after November 6, 2002.

4. OTHER PUBLICITY. In addition to the formal notice set forth in Paragraph 2, the Department shall actively notify tax and professional trade journals and tax services by formal news release. The formal news release shall include a summary of the settlement, the availability of the copies of the Court approved formal notice, this Stipulation and Claim Form on the Department's website and contact addresses and phone numbers for Class Counsel and the Department to obtain additional information. The Department's formal news release shall be distributed to the Arizona State Bar Association (including the Arizona Attorney publication), the American Bar Association (including the ABA Journal and the Chair of the ABA's Section of State and Local Taxation), the Arizona Society of Certified Public Accountants, the American Institute of Certified Public Accountants, the Bureau of National Affairs, Inc. (Tax Management), CCH Publishers, West Publishing, Warren, Gorham & Lamont, Tax Analysts (State Tax Notes) and Thomson/RIA. In addition, the terms of the settlement and all related documents shall be prominently posted on the Department's website no later than October 11, 2002. The Department's website shall be timely updated to reflect developments in the approval process and the refund payment process.

5. COMMON FUND. The Common Fund is the total amount of tax refunds, including interest, due to all members of the class, calculated in accordance with this Stipulation. The Department shall not be required to deposit into Court or otherwise physically segregate the funds required to satisfy its obligations provided for herein.

A. *Reserves for Fees and Costs.* All Costs of Administration, as described in Paragraph 11, and Attorneys' Fees and Costs, as described in Paragraph 14,

shall be borne solely by the class members and shall reduce their refunds on a pro rata basis. A reserve equal to \$35 million shall be set aside from the refunds paid to the class members to cover the Costs of Administration of this settlement as set forth in Paragraph 11 below. A reserve equal to twelve percent (12%) times the lesser of the Common Fund or the Cap (as defined in Paragraph 6) shall be set aside from the refunds paid to the class members to cover Attorneys' Fees and Costs as set forth in Paragraph 14 below. The foregoing reserves shall reduce refunds on a pro rata basis. Any amounts reserved in excess of the amount approved by the Court for Costs of Administration or awarded by the Court for Attorneys' Fees and Costs shall be paid pro rata to the class members in the final refund installment based on their total computed refunds for all years. The foregoing reserves will be recalculated as of each installment payment date as necessary.

6. COMMON FUND CAP. Notwithstanding the amount of the Common Fund computed pursuant to Paragraph 5, the Department's Common Fund payment obligation including distributions for Costs of Administration and Attorneys' Fees and Costs shall not exceed \$350 Million (the "Cap"), subject to the following adjustments.

A. *Opt-Out Reserve.* The Cap shall be reduced by the amount of refunds claimed due by members of the class who opt-out within the time established by the Court ("Opt-Out Reserve.") The amount of refunds in the Opt-Out Reserve shall be the amount claimed by the taxpayer or estimated by the Department at its discretion in accordance with Title 42, Arizona Revised Statutes, including relevant adjustments and interest calculated or reasonably estimated by the Department. If amounts remain in this reserve as of 90 days before the mailing of the final installment payment pursuant to Paragraph 9, the Department shall notify Class Counsel of the amount of the remaining reserve. The final disposition of the reserve shall be governed by the agreement of the Department and Class Counsel or, if there is no agreement, by order of the Court.

B. *Disputed Dividend Reserve.* The Cap shall be further reduced by the additional amount of refunds claimed to be due by members of the class who dispute any amount set forth in the Notice of Refund Calculation described in Paragraph 8 over the amount of the Department's calculations using the information contained in such notice ("Disputed Dividend Reserve."). All amounts reserved under this provision remaining after the resolution of disputes shall be restored to the Cap and, if the Disputed Dividend Reserve had previously reduced refunds due to the Cap having been exceeded, refunds shall be adjusted in the same manner as provided in Paragraph 6D.

C. *Common Fund Adjustments.* In the event that the Common Fund exceeds the Cap as reduced (including as a result of subsections 6A and 6B above), the refunds due to each class member shall be reduced on a pro rata basis so that the Common Fund equals the reduced Cap. Any such reduction shall apply first to refunds of interest and then to refunds of tax.

D. *Interest Estimates and Adjustments.* The Department will calculate an estimate of the total interest anticipated to accrue on future installments as of each installment payment date. This estimate will be used to determine the applicability of the Cap in order for the Department to allocate any pro rata reductions to individual refund amounts. The Department will adjust this estimate as necessary to reflect applicable changes. In the event a pro rata reduction is applied to any installment as a result of such estimates and it is ultimately determined that the actual interest due is less than the estimated interest such that the total refunds using the actual interest would not have exceeded the Cap (or exceeded it by a lesser amount), the Department shall readjust the previously paid refunds to the actual amount that would have been paid subject to the overall limitation of the Cap.

Any adjustment made to refunds to class members under this Stipulation shall be made on a pro rata basis. Any refund reduction shall be applied to interest and

then to tax. In no event shall the refund to any class member, before reduction for their pro rata obligation for Attorney Fees and Cost and Costs of Administration, be more than the tax refund due pursuant to Paragraph 7D together with applicable interest thereon.

7. REFUND PROCESS. The Department shall calculate the refunds due pursuant to the terms of this Stipulation for all class members who appear in the Department's records and for all those class members who do not appear in the Department's records but who satisfy the requirements of Paragraph 3 above.

A. *State and Federal Records Available to the Department.* The IRS sends the Department an Individual Return Transaction File ("IRTF") tape. The IRTF tape contains information that the IRS keys into its system from income tax returns, but does not include copies of the actual returns. The tape includes returns filed from an Arizona address, but not necessarily all Arizona residents. The IRS also sends IMF and 1099-DIV electronic tapes to the Department. The 1099-DIV tapes contain information from some 1099-DIV Forms sent to Arizona addresses. The IMF electronic tapes contain the Individual Master File that contains the taxpayer's name, identifier and address information. To the extent practicable, the Department will use an electronic process to determine the refund due class members hereunder. To that end, the Department will employ consultants to attempt full recovery of all necessary data from those unreadable portions of the Internal Revenue Service's IMF and IRTF computer tapes for the taxable years 1987 through 1989. If this data recovery is not completely successful, the Department may, in its discretion, seek professional services to digitize the relevant portions of the microfiche of the IMF and IRTF tapes ("Federal Yearbook") for the taxable year 1987 through 1989. The Department will seek professional services to digitize the relevant portions of the Federal Yearbook for the taxable year 1986. The Department will also seek professional services to digitize the relevant portions of the 1988 Arizona keyed data ("Arizona Yearbook"). The Department will evaluate the

quality and quantity of all electronic data from the Federal Yearbook and State Yearbook for tax years 1986 through 1989 and determine whether to seek professional services to digitize additional relevant data to ensure the Notice of Refund Calculation is issued timely (see Paragraph 8 below). The costs of the foregoing and other data recovery and digitization shall be included in the Costs of Administration. Counsel for the Department and Class Counsel will informally confer on a periodic basis as to the status of the refund process.

B. *Dividend Formula.* Except as set forth below for part-year residents, the dividend income that qualifies for a refund for each applicable year shall be determined by taking the amount reported as dividends on the class member's federal income tax return ("Reported Dividends") as set forth in (1) the electronic records available to the Department; or (2) if that data is not available, the microfiche records for class members for whom the Department has an electronic record or claim form evidencing dividends for that year; or (3) if the Department has no record of the relevant data, the amount determined pursuant to Paragraph 7E below. The Reported Dividends shall then be multiplied by 49.28% to determine the "Qualifying Dividend" amount. The 49.28% factor to determine the Qualifying Dividends is being used in lieu of the several step process of determining the related adjustments, exclusions and calculations required to be made in order to determine the refund.

C. *Part-Year Residents.* The Department will identify those persons that the electronic records indicate were part-year residents with dividend income. For those persons the Department identifies as part-year residents with dividend income, it will calculate a resident apportionment percentage for part year residents by creating a fraction, the numerator of which shall be the amount of income subject to Arizona tax, and the denominator of which shall be the amount of federal adjusted gross income, all as reported by the class member on the class member's tax returns for the applicable year(s).

The resulting fraction shall be multiplied times the Reported Dividend, which shall be multiplied by 49.28% to determine the Qualifying Dividend amount.

D. *Refund Calculation.* The refund due for the relevant years shall be determined by subtracting the amount of the Qualifying Dividend from the class member's previously reported Arizona taxable income (defined as taxable income as shown on an Arizona Form 140 or adjusted gross income as shown on an Arizona Form 140A hereinafter referred to as "taxable income") to arrive at the corrected Arizona income. The Department shall determine the amount of any overpayment by applying the tax rates or tax tables, whichever is applicable to a class member, in effect for the applicable year to the corrected Arizona income amount. In no event shall the resulting overpayment amount be more than the amount of Arizona income tax that the class member paid. Interest, based on the schedule of installment payments set forth in Paragraph 9 below, shall be calculated in accordance with A.R.S. § 42-1123 and shall be added to the tax overpayments to determine the total refund due to each member of the class ("Refund Amount"). The Department shall use the amounts set forth in its records for each class member's previously reported Arizona taxable income and Arizona income taxes paid. If the Department has no record of the relevant data, the Department shall use the amounts determined pursuant to Paragraph 7E below.

The Department reserves the right to adjust for federal changes for the years in issue pursuant to the provisions of A.R.S. §§ 42-1104(B)(5), (B)(6) and 43-327. Subject to this reservation, the Department has agreed to forego the right to audit, assess, setoff or otherwise adjust for additional tax due on the tax return for the year(s) in issue.

E. *Taxpayer Records.* If the tax return records in the Department's possession do not contain all of the necessary data, the Department will request copies of the necessary records from the class member ("Taxpayer Records"). The request will be mailed to the class member by first class mail at the member's most recent mailing

address as reflected in the Department's records. The class member shall have 45 days to provide the requested records. A class member's failure to provide the requested records within 45 days may effect the refund calculation as set forth in Paragraph 8. Any request by the Department for records shall notify the class member of the foregoing 45 day time limit and the effect of failure to timely respond. The Department may dispute the amounts set forth in the Taxpayer Records if it believes such records are not reliable. If there is a dispute, the Department shall use the amount agreed to by the affected class member and the Department or, if there is no agreement, an amount approved by the Court in resolution of such dispute.

8. NOTICE OF DIVIDEND CALCULATION. On or before the Notice of Dividend Calculation date (hereinafter "calculation date" which shall be the first business day after fifteen months have elapsed from the day the Court issues a final determination approving the settlement), the Department shall advise each class member, by first class mail sent to the member's most recent mailing address as reflected in the Department's records, of the Arizona taxable income previously reported, the Arizona income taxes previously paid, and the Reported Dividend amount that the Department will be using for the refund formula calculation for each of the years for which a class member may be entitled to a refund under the Stipulation ("Notice of Dividend Calculation.") If the Department has previously requested records from a class member for any particular tax year pursuant to Paragraph 7E. above, and if such class member or authorized representative fails to provide those documents within 45 days from the date the Department mails the request, the Department may enter \$0.00 for such item in the Notice of Dividend Calculation for which the Department requested and did not timely receive records for such tax year.

A class member shall have 45 days from the mailing date of the Department's Notice of Dividend Calculation to file a written objection to the correctness of the

Arizona taxable income previously reported, the Arizona income tax previously paid and the Reported Dividend amount reflected in the Department's Notice. The Department's Notice of Dividend Calculation shall set forth the right to object to the correctness of these amounts in the Notice. There shall be no other grounds for objection. If there is no timely objection filed in response to the Department's Notice of Dividend Calculation, the amounts set forth in the Department's Notice shall be final for the calculation of all refunds provided for hereunder for the class member. Class counsel or other authorized representative of the class member shall be contacted if the Department is unable to resolve a dispute directly with the class member. If the class member and the Department cannot agree on the correct amount, the matter shall be determined by the Court pursuant to Paragraph 28 below.

The Notice of Dividend Calculation shall also inform class members that the Department will not pay any Refund Amount which totals less than \$4.00 for all years in issue, unless requested in writing by the class member no later than 45 days after the mailing date of the Notice. The Refund Amounts, if any, which are not paid as the result of this provision shall be added to the reserve for Costs of Administration set forth in Paragraph 5A.

9. REFUND PAYMENTS. Refund payments will be made in four (approximately equal) installments with the first two installment payments to be made no later than the first business day after twenty months have elapsed from the date the court issues its final determination approving the settlement, the third installment payment to be made no later than July 20, 2005, and the final installment to be made no later than July 21, 2006. The initial installment payment shall include a notice of the estimated total Refund Amount to be paid to the class members, without any necessary adjustments as outlined in this Stipulation. Class members will receive upward adjustments if any, with their final installment payment. At the option of the Department, class members

whose total refund amount is \$400 or less may be paid in one installment on the date set forth above for the first installment payment. In consideration of being paid in a lump sum, such class members shall not participate in the event there are upward adjustments to refund amounts paid with the final installments. The Department may prepay its entire obligation hereunder at anytime recalculating interest to that point in time. The Department will not pay any Refund Amount which totals less than \$4.00 for all years in issue, unless requested in writing by the class member as set forth in Paragraph 8 above.

10. OTHER DEBTS. Each payment to a class member under this settlement, after all adjustments and prorations, including reserves, shall first be credited against any amount of tax, penalties or interest due the State of Arizona and then against any other debts or taxes owed to or through the State of Arizona or the federal government according to the standard order of preference used by the Department for other income tax refund offsets.

11. COSTS OF ADMINISTRATION. The Costs of Administration shall be charged against the reserve for Costs of Administration set forth in Paragraph 5A. For purposes of this Stipulation, Costs of Administration shall include, but not be limited to: (1) the costs of preparation and mailing of any notices and communications needed to be performed by the Department; (2) the costs of data preparation, capture, recovery, conversion, and analysis; (3) the costs of researching tax records; (4) the costs of refund calculations and payments; (5) the costs of any special masters, mediators, arbitrators whether appointed by the Court or by agreement of the parties and (6) all other costs necessary for the implementation and administration of this settlement. The above costs shall include, but not be limited to: the direct costs of Department of Revenue personnel including salary and employee related expenses; the costs of contract personnel; the costs of purchasing or leasing equipment; the costs of leasing or renting space; the costs of consumable supplies; the costs of consultants; the costs of services; and the costs of

mailing including postage. The Costs of Administration shall not include the costs of the Department's attorney fees or costs not necessary to the refund process provided for in this Stipulation or ordered by the Court.

The Costs of Administration shall include only costs incurred by the Department on or after July 1, 2002. The Department may draw upon the reserves set forth in Paragraph 5A for Costs of Administration upon approval of the Court. The Department may petition the Court, or a designee of the Court, for advance approval of expenditures before incurring those costs or may seek Court approval after the Costs are incurred. Prior to the final payment the Department shall estimate its remaining Costs of Administration and obtain Court approval to set funds aside from the reserve set forth in Paragraph 5A to cover such anticipated Costs. All remaining funds in the reserve in excess of the total expended and anticipated Costs of Administration shall be paid on a pro rata basis, in the final refund installment, to the class members, other than those who have been paid in a single installment as set forth in Paragraph 9. Any such pro rata adjustment shall be based on the class members' total computed refunds for all years.

12. UNDELIVERABLE REFUND PAYMENTS. The Department agrees to utilize the following procedure for any installment refund payment returned as undeliverable. In the event that an installment refund payment is returned as undeliverable, the Department will undertake to search its database and the data available to it both from the Internal Revenue Service and outside contractors who have access to the national database maintained for the United States Post Office in order to attempt to obtain a better address of the person who is to receive the returned payment. If, and only if, no such address can be ascertained, will the undelivered refund check be deposited into the Unclaimed Property Fund and administered pursuant to Title 44, Arizona Revised Statutes.

13. DECEDENTS' REFUNDS. In the event that a refund is due to a deceased individual or individuals and the estate(s) for such individuals have been closed, or in the

event no estate has ever been opened, the Department shall use the same procedures for Decedents' refunds that are used for unclaimed property under A.R.S. § 44-301, et seq. In the event a dispute arises between the claimant and the Department, the matter may be submitted to the Court under Paragraph 28 hereunder or if the refund amounts become unclaimed property the claimant shall have all remedies available under A.R.S. §§ 44-317 and 44-318.

14. ATTORNEYS' FEES AND COSTS. Class Counsel and the Department agree that class counsel are entitled to reasonable attorneys' fees for their efforts in this matter. There is a dispute, however, as to the amount of fees that may be considered reasonable. Further, Class Counsel contends that the State does not have standing to contest the amount of attorneys' fees and costs awarded by the court because they are being paid from the common fund. The State contends that it does have standing to be heard on the issue of fees and costs. To avoid further delay in the settlement process, the Department and Class counsel agreed to a process of mediation whereby a neutral expert was used to make a recommendation after having been briefed by both sides. Class Counsel and the Department presented their written and oral arguments to Bruce Meyerson, as a neutral expert, concerning the amount of a reasonable award for Attorneys' Fees and Costs. The neutral expert determined that a fair range for the award in this case is nine percent to twelve percent of the fund created by Class Counsel's efforts. A copy of the recommendation is attached hereto as Exhibit B. Class Counsel and the Department stipulate that (1) the Tax Court may not approve an attorneys' fee in excess of the upper range of the recommendation, (2) neither the State Defendants nor any other State office will appeal the award to Class Counsel as long as it does not exceed the upper range of the recommendation, and (3) Class Counsel will not appeal the award to Class Counsel as long as it does not fall below the lower range of the recommendation. Class counsel and the Department shall be free to argue to the court for

any determination of an attorneys' fee within the range recommended by the neutral expert. Further, this agreement does not resolve the legal issue of whether the State Defendants have standing to contest any request by Class Counsel for Attorneys' Fees and Costs. Except as expressly stated above in this paragraph, nothing in Mr. Meyerson's recommendation is binding upon the Court or the class members.

Class Counsel shall file a Motion with the Court for its claims for Attorneys' Fees and Costs in an amount not to exceed twelve percent (12%) times the lesser of the Common Fund or the Cap. The class members shall be provided with notice, through the Notice of Class Certification, of the amount requested by Class Counsel for Attorneys' Fees and Costs and shall be provided with an opportunity to be heard. The Court may determine the standing of anyone else to be heard concerning Class Counsel's motion.

Any amount awarded by the Court as attorneys' fees and costs shall be paid out of the reserves for Fees and Costs set forth in Paragraph 5A.

Subject to the adjustment for the \$4 million in payments described below, the amount awarded by the Court to Class Counsel as Attorneys' Fees and Costs shall be paid in installments at the same time and in the same ratio that the installment refund payments are paid to class members pursuant to the schedule set forth in Paragraph 9. If this Stipulation is finally approved, Class Counsel shall be paid the sum of \$2 million not later than twenty business days from the date that the court issues its final determination approving the settlement and \$2 million on September 19, 2003. These total payments of \$4 million shall be credited against the amount due class counsel for its first installment payment.

15. SETTLEMENT ADMINISTRATION. The parties shall exchange information, subject to statutory and Internal Revenue Service confidentiality requirements, at regular intervals (in electronic format where practicable) concerning the claims process in order to permit status reports to be developed, trace class members,

negotiate disputed claims and monitor Costs of Administration.

Within 45 days following each installment payment, the Department shall provide an accounting to the Court with a copy served upon Class Counsel. The Report will include the total number of class members who were sent refunds, the total refunds paid, the total number of opt-outs, an accounting of the reserves since the last report and shall include a breakdown by category of all Costs of Administration, the number of taxpayers and total refunds deposited into the Unclaimed Property Fund, the amount of Attorneys' Fees and Costs paid and a report of the Costs of Administration. The accounting will reflect both current activity and cumulative totals.

16. UNFORESEEN CIRCUMSTANCES. In the event either party identifies a major problem with respect to the administration and processing of refunds as provided for herein, it shall immediately notify the other party of the facts and circumstances of the problem so identified. Notice to the class shall be sent to Class Counsel. Notice to the Department shall be sent to the Arizona Attorney General's Office, Chief Counsel Tax Section. The Department shall post any such notice that it sends or receives on its Internet website subject to confidentiality restrictions. In the event the parties are unable to reasonably resolve the problem, the parties agree that the problem will be submitted to the Court forthwith for final resolution as provided in Paragraph 28.

17. OBJECTIONS. At the final approval hearing, any member of the class, who has not opted out and who desires to submit an objection to this settlement, may appear personally or by counsel and show cause, if any, why the Stipulation should not be approved as fair, reasonable, adequate and in the best interest of the class or why the amount of attorney fees and costs requested by Class Counsel should not be approved and paid out of the Common Fund from the reserves provided therefor. Unless the Court directs, no member of the class shall be heard or shall be entitled to contest any of these matters and no papers, briefs, pleadings or other documents submitted by any member of

class shall be received and considered, except by rule of the Court for good cause shown, unless, no later than December 11, 2002, the following documents have been signed pursuant to Rule 11, *Ariz.R.Civ.P.*, served and filed in the manner provided below:

- a. Notice of Intention to Appear;
- b. A detailed statement of such person's specific objections to any matter before the Court;
- c. Proof of membership in the class; and
- d. The grounds for such objections and any reasons why such person desires to appear and be heard, as well as all documents and writings which such person desires the Court to consider.

Such documents shall be filed with the Clerk of Court and served by mail or hand-delivery upon Class Counsel and the Attorney General's Office. Any objections filed and served in accordance with this procedure will be considered by the Court whether or not the objecting Class Member appears personally or by counsel at the hearing.

18. FURTHER PROCEEDINGS. In the event this Stipulation is not approved and a final order of approval entered thereon, the parties will be restored to their respective positions prior to the date of this Stipulation and this Stipulation shall be of no force or effect and the agreements reflected herein will be without prejudice to the parties' rights to maintain their respective positions concerning right of recovery or defenses thereto before the Court or in any appeal taken therefrom.

19. SETTLEMENT REPORTING. The Department will report refund settlement payments on Form 1099-G or such other form as required by the Internal Revenue Service. The Department agrees to seek advice from the Internal Revenue Service as to whether any amounts set aside for Attorneys' Fees and Costs and Costs of Administration are reportable as taxable income by class members and therefore, whether or not they shall be included in the amounts reported. The Department shall agree to abide by any determination received from the Internal Revenue Service on this issue. If the Internal Revenue Service issues a determination adverse to the class, the Department shall immediately notify Class Counsel.

20. BEST EFFORTS. The parties and their counsel will use their best efforts to implement this settlement as set forth in this Stipulation.

21. AUTHORITY. All persons executing the Stipulation and any of the exhibits hereto warrant and represent that they are fully authorized to enter into the terms and conditions of, and to execute such documents on behalf of their respective parties.

22. COUNTERPARTS. This Stipulation and its exhibits may be executed in one or more counterparts, all of which together shall be considered one instrument and all of which shall be considered duplicate originals.

23. MODIFICATION; INTEGRATION. This Stipulation contains the parties' entire agreement with respect to the subject matter of this action. This Stipulation may be amended or modified only by written instrument signed by all the signatories hereto.

24. GOVERNING LAW. This Stipulation shall be governed by and construed in accordance with the laws and Constitution of the State of Arizona and the United States Constitution.

25. FINALITY. The parties to this Stipulation intend it to be a final and complete resolution of all disputes asserted or which could have been asserted by Plaintiff or the members of the class against the Department with respect to the matter settled herein.

26. RECITALS. All recitals contained in this Stipulation are incorporated into and deemed to be part of the substantive provisions hereof as if fully set forth herein.

27. PARAGRAPH TITLES. The titles of paragraphs herein are for purposes of reference only and shall have no legal meaning or effect.

28. CONTINUING COURT SUPERVISION. Upon final approval of the Stipulation, it is agreed that the Court shall retain jurisdiction over this matter until the Department has fully performed all of its obligations hereunder. In addition, the Court may enter additional orders to effectuate the fair and orderly administration of the settlement as may from time to time be appropriate, including, *inter alia*, determination of persons to whom refund payments should be made in the event of death or marital dissolution. All parties to this Stipulation submit to the jurisdiction of the Court for such purposes.

Unless otherwise ordered by the Court, it will not be necessary for the parties to issue notice to individual class members with respect to problems subsequently resolved by the Court. It is agreed that the resolution of any problems of significance to the Class under this paragraph will be published on the Department's Internet website.

29. LATE PAYMENT. The parties recognize that the Department needs legislative authorization to expend monies for the Costs of Administration. In the event that the Department fails to make the payments due under the terms of this Stipulation in a timely manner, unless such due dates are extended by agreement of the parties or an order of the Court, interest shall accrue pursuant to A.R.S. § 42-1123 on the sums not timely paid from the date the installment payment was to be made until the date such payment is made. Such additional interest shall be paid without regard to any limitations that would otherwise be imposed by the application of the Cap and shall be considered an addition to the Cap. The provision applies even if the delay is caused by the Legislature's failure to appropriate or otherwise authorize spending necessary under the terms of this Stipulation. In the event of any failure by the State of Arizona to make timely payments to class members under the terms of this Stipulation, nothing in this paragraph shall be construed as limiting any right of the class members to seek appropriate relief from the court pursuant to Paragraph 28.

30. DISMISSAL. Upon the Department's performance of all its obligations hereunder and upon acceptance by the Court of the Department's final accounting, the

parties agree that, upon motion of the Department, an order of dismissal with prejudice and without further costs may then be entered.

31. COURT APPROVAL. The parties shall submit this Stipulation as soon as practicable to the Court for preliminary and final approvals pursuant to Rule 23(e), *Ariz.R.Civ.P.*

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of September, 2002.

BONN & WILKINS, CHARTERED  
S.C.

O'NEIL, CANNON & HOLLMAN,  
S.C.

By: Randall D. Wilkins

Paul V. Bonn, Esq.  
Randall D. Wilkins, Esq.  
D. Michael Hall, Esq.  
*Attorneys for Plaintiffs*

By: Eugene O. Duffy

Eugene O. Duffy, Esq.  
*Attorneys for Plaintiffs*

ARIZONA DEPARTMENT OF REVENUE

By: Mark W. Killian

Mark W. Killian, Director

APPROVED AS TO FORM:

JANET NAPOLITANO  
Arizona Attorney General

By: Michael F. Kerpner

Michael F. Kerpner  
Assistant Attorney General

#372802 v8 - LADEWIG SETTLEMENT STIPULATION

# Exhibit “C”

**ARIZONA COURT OF APPEALS  
DIVISION ONE**

ROBERT KAMMAN, individually and in his capacity as beneficiary of the Estate of Glenn Kamman and of the Estate of Mildred Kamman, and PEGGY BACON, individually and in her capacity as the Personal Representative of the Estate of J. Dorothy Riggs and the Estate of Dorothy Schaberg,

Objectors/Appellants,

v.

ESTATE OF HELEN H. LADEWIG, on behalf of itself and the class of all persons in the State of Arizona, who during any one of the years 1986 to 1989 paid income taxes to the State of Arizona on dividends paid by corporations whose principal business was not attributable to Arizona,

Plaintiffs/Appellees,

ARIZONA DEPARTMENT OF REVENUE,

Defendant/Appellee.

---

MERCEDES VALENZUELA,

Intervenor-Appellant,

v.

ESTATE OF HELEN H. LADEWIG, on behalf of itself and the class of all persons in the State of Arizona, who during any one of the years 1986 to 1989 paid income taxes to the State of Arizona on dividends paid by corporations whose principal business was not attributable to Arizona,

Plaintiffs/Appellees,

ARIZONA DEPARTMENT OF REVENUE,

Defendant/Appellee.

---

1 CA-TX 03-0003

(Consolidated with  
1 CA-TX 03-0004)

Arizona Tax Court  
No. TX 97-00075

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**DEPARTMENT OF REVENUE'S ANSWERING BRIEF**

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Terry Goddard  
Attorney General  
Firm State Bar No. 14000

Michael F. Kempner(010651)  
Lisa A. Neuville (012285)  
Assistant Attorney General  
1275 West Washington Street  
Phoenix, Arizona 85007-2997  
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Attorneys for Arizona  
Department of Revenue

upholding settlements and should not substitute their own judgments as to optimal settlement terms for that of the litigants or the trial court. *Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305, 315 (7<sup>th</sup> Cir. 1980).

B. There Is No Readily Available Means to Identify Non-Arizona Corporate Dividend Income Fifteen Years After Taxpayers Have Received the Income.

Appellant Robert Kamman ("Kamman") argues that the Settlement is not fair, adequate or reasonable because some taxpayers may receive larger refunds than they deserve while others will receive less than they deserve. (Opening Brief at 5.) The record demonstrates that the Department could not accurately determine the refunds due class members based upon tax records. The Department and Class Counsel developed the refund formula to provide refunds within a reasonable amount of time and for a reasonable cost. Kamman fails to demonstrate that the Settlement is unfair, inadequate or unreasonable.

This case concerns taxes that class members paid on their non-Arizona corporate dividend income for tax years 1986 through 1989 (the "Refund Period"). The Department conducted a sampling and discovered numerous issues that made it very difficult to discern the actual amount of qualifying dividend income from the tax records. Indeed, the Department could identify the amount of non-Arizona corporate dividends for only 16 taxpayers, less than 1.3% of the 1,236 taxpayers that the sampling included. (TR. at 77.)

income tax return and recalculate the tax on the lower income amount. (App. A, ¶ 7(D).)

The Formula is relatively easy to administer. The only variables are the amount of the dividend income reported on the class member's federal return, the taxable income on the class member's Arizona return, and the tax paid to Arizona. The most likely discrepancies should be caused by amended returns filed after 1989 or clerical errors in keying in the return information. These discrepancies can be easily resolved with copies of the actual returns.

The only alternative to applying the Formula was to require class members to file claims forms with backup documentation. (R. 110 [Ex. 2, ¶ 3].) Class members would have had difficulty completing such claim forms fully and accurately. (R. 111 [Ex. D, ¶ 9].) The Department would also have had difficulty auditing those claim forms and verifying their accuracy. (R. 110 [Ex. 2, ¶ 6].) Even when the Department had complete tax records, it could calculate refunds for only a "very tiny, tiny, tiny, tiny percentage" of class members. (TR. at 115.)

Even if it were possible to accurately determine refunds from claim forms, doing so would dramatically increase the costs of administering the refunds and would delay payments for years. The Department would have to spend years processing claim forms. (R. 110 [Ex. 2, ¶ 7].) In the Department's sampling, it took auditors 500 hours to review 1,236 returns. (TR. at 102.) That did not

The Arizona Constitution's Gift Clause, article IX, section 7, prohibits the State from using State funds for private enterprises. Its purpose was to prevent governmental entities from depleting public funds by subsidizing private enterprises such as railroad and canal building. *Kotterman v. Killian*, 193 Ariz. 273, 288, 972 P.2d 606, 621 (1999). The State's settlement of a tax refund obligation is not the type of evil that the Gift Clause was intended to prevent.

A governmental body's use of State funds does not violate the Gift Clause if:

(1) the use is for a public purpose, and (2) the value of the public money or property is not so much greater than the value of the benefit received by the public that the exchange of the one for the other is disproportionate.

*Maricopa County v. State*, 187 Ariz. 275, 279-80, 928 P.2d 699, 703-4 (App.

1996). Kamman admits that the Settlement is for a public purpose. (Opening Brief at 11.) Thus, the only issue is whether the consideration exchanged under the Settlement is disproportionate. The party challenging the constitutionality of a governmental action has the burden of demonstrating such disproportionality. *Id.* at 281, 928 P.2d at 705.

Kamman failed to present any evidence to show that the Settlement is unfair to the State or that the State's obligations under the Settlement are disproportional to what it receives. The Department presented testimony, however, that the

Settlement is fair to the State. (TR. at 89.) First, the Settlement resolves the entire refund liability to the class members. The Formula includes all relevant adjustments to identify the Department's liability to the class as a whole. (TR. at 134-35.) The Settlement spreads the payments over three years and delays the first payment until the 2005 fiscal year. (App. A, ¶ 9.) It imposes a cap on the State's liability under the Settlement. (*Id.*, ¶ 6.) It also provides that class members shall bear the costs of administration and attorneys' fees. (*Id.*, ¶ 5(A).) The tax court considered all of these benefits to the State when approving the Settlement. (TR. at 302.)

Kamman's only argument is that the Settlement may pay refunds to people who are not members of the class. (Opening Brief at 11.) Courts look to whether public funds are used for public purposes and whether the value of the benefits exchanged are proportional. As long as the action at issue satisfies those two requirements, it does not contravene the Gift Clause even if particular persons or organizations benefit from it. *Pimalco, Inc. v. Maricopa County*, 188 Ariz. 550, 559, 937 P.2d 1198, 1207 (App. 1997). The Settlement does not violate the Gift Clause merely because some individuals may fare better than others under its terms.

Kamman also misinterprets Mr. Shiffrin's declaration. (Opening Brief at 11-12.) Mr. Shiffrin did state that there were taxpayers with large amounts of

# Exhibit “D”

# HOUSE OF REPRESENTATIVES

## SB 1524

Ladewig settlement payments; budget.

Sponsors: Senators Burns, Bee, Bennett, Blendu, et al.

- 
- DP Committee on Appropriations (B)
- DP Committee on Appropriations (P)
- DP Caucus and COW
- DP Third Read and As Passed the House
- X As Transmitted to the Governor
- 

SB 1524 allocates \$58,258,900 to the Department of Revenue in FY 2005-2006 to pay for costs associated with the Ladewig v. State of Arizona settlement. **SB 1524 was substituted for HB 2775 on Third Read.**

### History

Prior to 1990, Arizona's investing citizens were allowed an income tax deduction for dividends received from corporations conducting at least 50% of their business in Arizona. The estate of Helen Ladewig filed a class action refund claim for tax years 1986 through 1989 on the grounds that this deduction violated the U.S. Constitution's Commerce Clause by posing a burden to interstate commerce. On August 29, 2001 the Arizona Supreme Court instated a class action, and held that it was sufficient for Ladewig alone, rather than each individual taxpayer, to file an administrative refund claim on individual income taxes paid on non-Arizona dividends.

In December 2002 the Tax Court approved a settlement agreement that capped the state's total liability at \$350 million including interest, as well as the administrative costs and attorney fees accrued by the Department of Revenue (DOR). The 2002 settlement called for 50% of the refunds to be paid in FY 2004-2005, 25% in FY 2005-2006, and the remaining refunds to be paid in FY 2006-2007. Attorney fees are paid when refunds are distributed, except for the \$2 million in advances paid during the time period from FY 2002-2003 to FY 2003-2004.

In 2002, the 45<sup>th</sup> Legislature passed SB 1060 appropriating \$75 million to pay for Ladewig related costs, including up to \$15 million for administrative costs to be used in FY 2002-2003. In 2003, Governor Napolitano line-item vetoed the part of HB 2533 that would have appropriated \$75 million for settlement expenses, but a year later signed SB 1416 allowing the appropriation of \$120 million for FY 2004-2005 costs associated with the Ladewig case, of which an upper limit of \$7.3 million was used for administrative purposes. In addition to appropriated monies, \$2 million was taken from the Risk Management Fund to pay court ordered attorney fees.

According to the Department of Revenue, the estimated total cost of the Ladewig Settlement is \$308.5 million. During FY 2002-2003 and FY 2003-2004, administrative expenditures and attorney fees were approximately \$16.3 million. Total estimated costs are \$134.7 million in FY 2004-2005, \$58.3 million in FY 2005-2006, and \$99.2 million in FY 2006-2007.

### Provisions

- Appropriates \$58.3 million from the General Fund to DOR in FY 2006-2007 for the Ladewig v. State of Arizona settlement.

- Allows up to \$1,758,900 of the total appropriation in FY 2006-2007 to be used by DOR for administration and review of payments, upon Joint Legislative Budget Committee (JLBC) approval of DOR's expenditure plan which must include the estimate and scope of administrative expenditures.
- Stipulates that any unused funds appropriated in this bill be reserved for future payments related to the case of Ladewig v. State of Arizona.
- Reverts the Ladewig settlement's unclaimed property from FY 2004-2005 and FY 2005-2006 to the General Fund.

----- DOCUMENT FOOTER -----

47th Legislature

First Regular Session 2

May 19, 2005

----- DOCUMENT FOOTER -----

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Senate Engrossed  
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State of Arizona  
Senate  
Forty-seventh  
Legislature  
First Regular Session  
2005  
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-----  
CHAPTER 333  
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-----  
SENATE BILL 1524  
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## AN ACT

PROVIDING FOR ALLOCATIONS FOR THE SETTLEMENT OF LADEWIG V. STATE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

### Section 1. Settlement payments; Ladewig v. State

A. The legislature allocates \$58,258,900 in fiscal year 2005-2006 for the purposes of covering the payments and costs associated with the case of Ladewig v. State of Arizona. The department of revenue shall draw all amounts necessary pursuant to the authority prescribed in section 42-1117, Arizona Revised Statutes, for the payments and costs.

B. From the allocation made in subsection A of this section, up to \$1,758,900 may be used by the department of revenue for the purposes of administration and review of payments. Additional administrative funding may be required as part of future allocations. Before the expenditure of any monies allocated in this subsection, the department of revenue shall present an expenditure plan for review by the joint legislative budget committee that includes an estimate and scope of the entire administrative requirement associated with disbursing payments and costs for this case.

C. From the allocation made in subsection A of this section, any unused amounts from subsections A and B of this section shall be held in reserve for future payments related to the case of Ladewig v. State of Arizona.

### Sec. 2. Ladewig settlement; unclaimed property; deposit

Notwithstanding section 44-313, Arizona Revised Statutes, the department of revenue shall deposit any unclaimed property for fiscal year 2004-2005 and fiscal year 2005-2006 that is associated with the case of Ladewig v. State of Arizona in the state general fund.

APPROVED BY THE GOVERNOR MAY 20, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2005.

# Exhibit “E”

1       IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
2       IN AND FOR THE COUNTY OF MARICOPA

[illegible]

10 Phoenix, Arizona  
11 May 26, 2005

14       BEFORE:   THE HONORABLE PAUL A. KATZ, Judge

16 REPORTER'S TRANSCRIPT OF PROCEEDINGS

22 Bethany D. Campbell, RPR  
23 Certified Court Reporter  
Certificate No. 50199

1 we can by giving a proper notice and opportunity  
2 to be heard and people to advance legitimate  
3 arguments, if they choose to do so, or make fools  
4 of themselves if they also choose that option.

5 But on a serious note, I'm happy -- let  
6 me ask you this. Do we know enough yet to --  
7 maybe the simplest thing is to just delay the  
8 payment rather than make a lesser payment to those  
9 individuals before we determine anything.

10 MS. NEUVILLE: Your Honor, perhaps an  
11 explanation of what the Department's done and what  
12 people were talking about. The Department went  
13 through and started off with people who they  
14 thought may have been overpaid by a thousand  
15 dollars or more.

16 The Department looked at not just the  
17 overpayment or the issue that led to the  
18 overpayment, but all four years and all four data.  
19 So in some cases the Department found there was an  
20 overpayment in one situation and an underpayment  
21 in another, because some other information was  
22 incorrect. And even though the class member  
23 didn't protest, the Department was looking at the  
24 claim. It looked at the entire claim. That's why  
25 the list attached to the Department's motion

1 aren't all thousand-dollar overpayments or more.  
2 Some of them are hundred dollars or something  
3 because of these other offsets.

4           The ones that the Department has listed,  
5 the 13 -- 1,300 people received more payments in  
6 the first installment than they're entitled to  
7 totally. So the overpayment amounts we list are  
8 the amounts that the first installment overpaid  
9 the total amount due. So for those people, there  
10 will be no opportunity to correct it by just not  
11 paying them less.

12           As the Department has gone through the  
13 others -- and the reason why we're talking about  
14 3,000 instead of 1,360, there were ones with  
15 smaller overpayments. The Department has just  
16 completed the process in reviewing those. There  
17 may be some in those cases where the next two  
18 installments -- last two installments will help  
19 compensate.

20           For those people, what the Department  
21 would like to do is pay them any amount over what  
22 they need to compensate for the initial  
23 overpayments. So if the Department determined  
24 that they were truly owed \$1,100 and they've  
25 already received a thousand, the Department would

# Exhibit “F”

[REDACTED]  
Tempe, AZ 85282  
25 July 2005  
[REDACTED]  
[REDACTED]

Clerk of the Arizona Tax Court  
125 West Washington  
Phoenix, AZ 85003

Re: Ladewig Overpayment  
No. TX 97-00075

COPY

Dear Clerk,

Please accept this letter as notice of my intent to participate at the hearing scheduled on 19 September 2005, to consider ADOR's motion.

Due to poor health I am unable to be present and will send my husband, [REDACTED] to attend and participate on my behalf.

The refund received in 2004 was sent to my brother, [REDACTED]. At the time he was already deceased and I am his beneficiary.

I believed he was entitled to this payment and used it accordingly. Recently, I was told that the overpayment is \$1,398,47 -- a very substantial amount that would be extremely difficult for me to repay either now or in the future.

My specific objection and its basis follows.

Since:

(a) The NOTICE OF CLASS CERTIFICATION, SETTLEMENT AND SETTLEMENT HEARINGS issued by the Superior Court of the State of Arizona in and for the County of Maricopa, specifically states (on page 1) that "The Court has determined that the former Arizona Tax regime, former A.R.S. 43-1052 facially discriminated in violation of the Commerce Clause of the United States Constitution as asserted by the named plaintiff and

(b) the same document states ( E. on page 3) "If a class member does not object to the amounts set forth in the calculation notice within 45 days of the date of the Department's notice, the amounts set forth in the notice will be final."

RECEIVED

JUL 26 2005

There is no reason the Court should :

(a) favor a facially discriminating government organization which violated the Commerce Clause of the United States Constitution and

(b) not follow the aforementioned declaration in Part E and make the amounts as stated in the ADOR's determination final, since we did not object to the ADOR's calculated amounts (within 45 days or indeed at any time at all).

Sincerely [REDACTED]

Beneficiary for [REDACTED]

cc. R. D. Wilkins, Esq  
L. A. Neuville, Esq